IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.9474 OF 2003

Janardhan V.S. Gavandi .... Petitioner
Vs.
Pandurang V.S. Gavandi & Anr. .... Respondents

Sarvasri Umesh Mankapure i/b R.V. More for the Petitioner.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

P.C:

1. Heard the learned Advocate for the petitioner. None present for the respondents. The note by the Registry discloses that the respondent No.1 refused to accept the service of notice. As far as the respondent No.2 is concerned, she has been duly served. The absence of the respondents discloses that they are not interested in contesting the proceedings.

2. By the present petition the petitioner is challenging the order dated 8-7-2002 whereby the application filed by the petitioner for condonation of delay in carrying out the amendment which was already allowed by the trial Court under the order dated 21-6-2002 was rejected. The records undoubtedly disclose that the amendment to the written statement was

allowed under the order dated 21-6-2002, subject to the payment of cost Rs.200/- and further that the cost was required to be paid and the amendment to be carried out on or before 27-6-2002.

3. However, the amendment was not carried out till 8-7-2002, on which day the petitioner filed an application disclosing the reason for failure on his part to carry out the amendment and to pay the cost within time. The trial Court, however, rejected the said application solely on the ground that the order was not complied with and there was total negligence by the petitioner.

4. Once the application categorically disclosed that the petitioner was sick during the relevant period and therefore could not carry out the amendment, nor could pay the cost within the specified time, but as soon as he was able to appear before the Court he had filed the said application, it was improper on the part of the trial Court to reject such an application for condonation of delay. The trial Court once having found the amendment to the pleadings by the petitioner to be necessary to decide the real question in controversy, merely because there was some delay in carrying out the amendment or payment of cost, that could not be a justification to refuse to extend the period for the

payment of cost and for carrying out the amendment. The impugned order, therefore, discloses improper exercise of jurisdiction on the part of the trial Court and hence the impugned order cannot be sustained and is hereby liable to be quashed and set aside and the time for payment of the cost and carrying out the amendment to the written statement be extended.

5. Accordingly, the petition is allowed; the impugned order is hereby quashed and set aside and the time to pay the cost and to carry out the amendment is extended till 28-4-2006. Order accordingly. The petition stands disposed of with no order as to costs.

(R.M.S. Khandeparkar, J.)

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